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**PETITION FOR RULE MAKING**  
**AND REQUEST FOR ISSUANCE OF ORDER TO SHOW CAUSE**

<sup>1</sup> On June 9, 1995, TBC filed an application seeking assignment of license of KTLS from Oklahoma Broadcasting Company ("OBC"). The terms of the agreement between TBC and OBC permit TBC to file this Petition. (See excerpts of Agreement, paragraph 21, Attachment A). The application was granted on August 8, 1995, but the assignment has not yet been consummated, so this petition is joined in by OBC in an abundance of caution. Upon consummation of the assignment, TBC will succeed to OBC's right to maintain this petition. The Commission has previously accepted petitions for rulemaking filed by the proposed assignee of an FM station seeking to amend the FM Table of Allotments, where the petitioner stated that it would apply for the changed facilities for the station and where the petitioner included a statement from the current licensee authorizing the petitioner to request a modification of the station's license. See, FM Table of Allotments (Anchorage, Alaska), 8 FCC Rcd 3880 (1993). As demonstrated herein, TBC has satisfied these requirements.

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(b) add Channel 227C1 to Newcastle, Oklahoma; (c) modify the license for KTLS(FM), Ada, Oklahoma, to specify "Newcastle, Oklahoma" as the Station's city of license, and (d) modify the license of KIMY(FM), Channel 228A, Watonga, Oklahoma, to operate on Channel 230A. In support whereof, the following is shown:

### **Background**

1. KTLS operates on Channel 227C1 at Ada, Oklahoma. TBC requests the Commission to delete Channel 227C1 from Ada and to reallocate it to Newcastle, Oklahoma, with a concurrent modification of the license of KTLS to operate on Channel 227C1 at Newcastle, Oklahoma. This change is permissible under Section 1.420(i) of the Rules, which authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's present allotment.

2. Two factors must be demonstrated in order to change a station's city of license in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission stated that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of license in determining whether an allotment proposal should be approved." *See Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). TBC's

proposal is consistent with the rules and Commission policies, i.e., the channel changes are mutually exclusive, and the rule making will not deprive Ada of its only local transmission service.

### **Expression of Continuing Interest**

3. If the Commission allots Channel 227C1 to Newcastle, following the consummation of the assignment of license of KTLS to TBC, TBC will promptly file an application for a minor change construction permit to operate KTLS at Newcastle, and upon grant, will promptly construct and operate the facilities.

4. Attachment B is a Technical Exhibit, which is incorporated herein by reference, that provides the Commission with technical information about the proposed Ada/Newcastle channel exchange.

### **Ada, Oklahoma**

5. As stated in the Technical Exhibit, Ada had a 1990 population of 15,820. Ada has four commercial broadcast stations, KADA(AM), KADA-FM, KYKC(FM), and KTLS(FM). Ada is also served by VHF commercial television station KTEN, and has an unused educational television allotment (Channel 22). Thus, Ada is well-served by local broadcast media.

### **Newcastle, Oklahoma**

6. Newcastle is an incorporated city with a mayor-city council type of government, which had a 1990 population of 4,214. The city provides all normal municipal services such as water, sewer, garbage pickup, police and fire protection. The city has grown from 1,271 persons in 1970 to an estimated 4,430 in 1992. Newcastle has commercial businesses such as motels, banks, restaurants,

grocery stores, and schools. Newcastle has 16 churches. Therefore, Newcastle possess the requisite "social, economic and cultural components that are commonly associated with community status." See, *FM Table of Allotments (East Hemet, CA)*, 67 RR 2d 146, 147 (1989). The city has only a weekly newspaper. Newcastle has no broadcast stations assigned to it. KTLS would bring first local service to Newcastle, since Newcastle currently does not have a local station. Newcastle is not located in an Urbanized Area.

### **Public Interest Considerations**

7. In changing its city of license, KTLS proposes to relocate its transmitter site. The Technical Exhibit demonstrates that the area gained by the proposal will be 13,169 square kilometers (assuming a maximum Class C1 facility) and the area lost will be 8,883.68 square kilometers (assuming the present KTLS facilities). Inside the gain area the technical statement indicates that there is a new population of 948,152 persons, and inside the loss area there is a population of 100,393. The Technical Exhibit demonstrates that the entire loss area will be covered by at least five primary aural services and is, therefore, well-served. See, *FM Table of Allotments (Douglas, GA, et al.)*, 10 FCC Rcd 7706, 7707 (1995) (where loss area received service from at least five full-time reception services, Commission found area to be "well-served"). Since Ada will continue to receive local service from four commercial broadcast stations and a television station, TBC's proposal will not deprive Ada of its only local transmission service.

8. As shown in the attached Technical Exhibit, Newcastle would be entirely covered by a 70 dBu or better signal from KTLS(FM). Thus, modification

of the license for KTLS would be consistent with the Commission's city-grade contour coverage requirements.

### **Substitution of Channels at Watonga, Oklahoma**

9. Channel 227C1 can be allotted to Newcastle, Oklahoma, at a reference point 7.9 km south of Newcastle (North latitude 35° 11' 39", West longitude 97° 35' 44") in compliance with all spacing constraints if Channel 230A is substituted for Channel 228A at Watonga, Oklahoma, and the license of KIMY(FM), Watonga, is modified to operate on Channel 230A. KIMY can utilize Channel 230A on its present tower. The present KIMY channel is grandfathered short-spaced under Section 73.213 of the Rules to KWFX(FM), Channel 228A, Woodward, Oklahoma, and both KIMY and KWFX operate with only 3 kilowatts ERP. Substituting Channel 230A for Channel 228A at Watonga would eliminate the short-space condition and allow KIMY to increase power to 6 kW ERP.<sup>2</sup> TBC will reimburse the licensee of KIMY for its reasonable and prudent costs incurred in connection with making the channel change, under the principles of *FM Table of Allotments (Circleville, Ohio)*, 8 FCC 2d 159 (1967). TBC requests that the Commission issue an order to the licensee of KIMY, Watonga, Oklahoma, to show cause why its license should not be modified to operate on Channel 230A. Issuance of such an order is consistent with Commission precedent where the requesting party has stated its willingness to reimburse the licensee of the station for reasonable costs associated with the proposed channel change. See, *FM Table*

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<sup>2</sup> KIMY and KWFX could possibly grant each other "concurrence" and operate with 6 kW, but the short space condition would still exist.

*of Allotments (Milton, West Virginia, et al.)*, DA 95-1818, released August 28, 1995; *FM Table of Allotments (Berlin, Wisconsin)*, DA 95-1569, released July 19, 1995; and *FM Table of Allotments (Camden, Arkansas)*, 10 FCC Rcd 7208 (1995).

10. The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 [51 RR 2d 807] (1982). They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, first local service to Newcastle is greatly preferred to fourth local service to Ada. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 227C1 to Newcastle.

WHEREFORE, TBC respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

Oklahoma

	<u>Present</u>	<u>Proposed</u>
Ada	227C1, 244A, 266A	244A, 266A
Newcastle	----	227C1
Watonga	228A	230A

Conclusion


TBC requests the Commission to (a) issue an order requiring the licensee of KIMY, Watonga, Oklahoma, to show cause why the Commission should not modify the license of KIMY to operate on Channel 230A, (b) allot Channel 227C1 to Newcastle, Oklahoma, and (c) modify the license of KTLS to operate on FM Channel 227C1 at Newcastle, Oklahoma. As stated supra, if the FCC modifies the license of KTLS to operate on Channel 227C1 at Newcastle, TBC will timely file

an application for minor change construction permit to operate KTLS at Newcastle,  
and upon grant thereof, TBC will construct the new facilities and operate them;  
and will reimburse the license of KIMY for its reasonable costs associated with the  
channel change.

Respectfully submitted,

**TYLER BROADCASTING CORPORATION**

By:



Gary S. Smithwick  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**

1990 M Street, N.W.

Suite 510

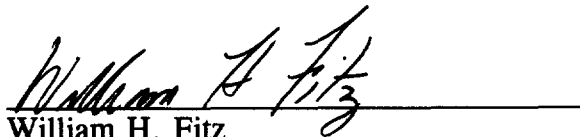
Washington, D.C. 20036

(202) 785-2800

Joined in only to provide consent of the licensee in connection with the  
filing of this Petition.

**OKLAHOMA BROADCASTING COMPANY**

By:



William H. Fitz  
Its Attorney

**COVINGTON & BURLING**

1201 Pennsylvania Avenue, N.W.

P.O. Box 7566

Washington, D.C. 20044-7566

(202) 662-5120

September 14, 1995

**ATTACHMENT A**



## **RADIO STATION ASSET SALES AGREEMENT**

THIS Agreement, referred to herein as "Definitive Agreement," made this 6th day of June, 1995, by and between Oklahoma Broadcasting Company, an Oklahoma corporation (hereinafter referred to as "Seller"), and Tyler Broadcasting Corporation, an Oklahoma corporation (hereinafter referred to as "Buyer"):

### **WITNESSETH:**

WHEREAS, Seller is the sole holder of a license from the Federal Communications Commission (hereinafter the "Commission" or "FCC") authorizing the operation of FM Station KTLS on the frequency 93.3 mHz, (Class C1) full-time, at Ada, Oklahoma (herein "Station");

WHEREAS, Seller desires to sell and Buyer desires to purchase all the assets (herein "Assets") (except those Excluded Assets set forth in Section 2 below) used or useful solely in the operation of the Station and to obtain assignments of all leases, contracts, and agreements and of the license issued by the Commission;

WHEREAS, the assignment of the license of the Station is subject to the prior approval of the Commission;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Seller and the Buyer, intending to be legally bound, do hereby mutually agree as follows:

0.0 **Defined Terms.** Unless otherwise stated in this Definitive Agreement, the following terms shall have the following meanings:

(v) Such other documents or things as Buyer may reasonably request in order to place Buyer in actual possession and operating control of the Assets and to convey clear title to the Station and of the Assets to be transferred;

(b) At the Closing Place on the Closing Date, Escrow Agent and Buyer shall deliver to Seller the following documents and things:

- (i) Escrow Agent shall deliver to Seller the Escrow Fund referred to in Section 3(a) less interest (if any) which shall be delivered to Buyer;
- (ii) Buyer shall deliver in Immediately Available Funds the sum of \$423,500.00.
- (iii) At the Closing Place on the Closing Date Buyer and Seller shall execute and deliver to Escrow Agent Joint Instructions directing Escrow Agent to deliver to Seller the Escrow Fund as set out in Escrow Agreement.

20. Preservation and Access of Books and Records. Buyer shall have reasonable access to such records held by Seller for a period of two (2) years after the Closing Date for the purpose of completing its tax, bookkeeping and accounting procedures and filing requirements, and for other purposes for which such access is reasonably necessary or proper. Seller will make such books and records available to Buyer at all reasonable times and permit the Buyer to make extracts from or copies of all such records.

21. Changes to Facilities. Seller agrees that, prior to the Closing, Buyer may, at Buyer's expense, file in Buyer's name with the FCC applications, petitions, or other papers (herein "FCC Filings") as deemed appropriate by Buyer to change the facilities of the Station after the Closing Date. A copy of this Section 21 of this Definitive Agreement may be filed

with such FCC Filings to satisfy the provisions of Title 47 C.F.R. §73.3517, or at Buyer's option, upon request of Buyer, and as often as required by Buyer, Seller shall promptly provide to Buyer a written statement or statements which specifically grants Seller's permission to Buyer (a) to file such FCC Filings, and (b) to file the statement with the FCC Filings. Seller shall not oppose, or file any papers with the FCC that conflict with, any such FCC Filings. Notwithstanding the foregoing, any FCC Filings to be prepared by Buyer or to be filed with the FCC shall not unduly delay processing and approval of Assignment Application, and the granting of any change in facilities or FCC Filings shall not be a condition to close this transaction.

22. Assignment. This Definitive Agreement may not be assigned by either party without the express written consent of the other party.

23. Notices. All necessary notices, demands and requests shall be deemed duly given, if mailed by registered mail, postage prepaid, and addressed to the following:

If to the Seller:

Oklahoma Broadcasting Company  
Post-Newsweek Cable  
c/o Tom Might, President/CEO  
4742 North 24th Street, Suite 270  
Phoenix, Arizona 85016

cc: Alan Silverman, Esquire  
Post-Newsweek Cable  
4742 North 24th Street, Suite 270  
Phoenix, Arizona 85016

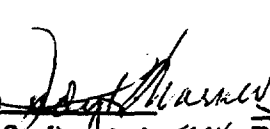

and

If to the Buyer:

(g) If any provision of this Definitive Agreement is invalid or unenforceable, such provision shall be deemed null and void, but the balance of this Agreement shall remain in effect.

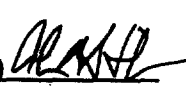

**BUYER:**

**TYLER BROADCASTING CORPORATION**

ATTEST: (SEAL)    
(Affix Corporate Seal) SECRETARY President

**SELLER:**

**OKLAHOMA BROADCASTING COMPANY**

ATTEST: (SEAL)    
(Affix Corporate Seal) SECRETARY Vice President

KTLS/SALE524.FNL

(g) If any provision of this Definitive Agreement is invalid or unenforceable, such provision shall be deemed null and void, but the balance of this Agreement shall remain in effect.

**BUYER:**

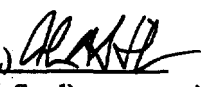
**TYLER BROADCASTING CORPORATION**

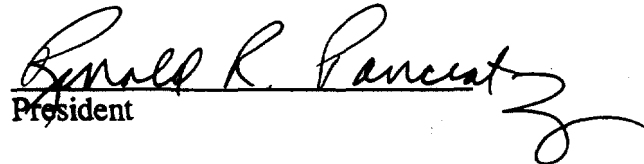
ATTEST: (SEAL) \_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
President

**SELLER:**

**OKLAHOMA BROADCASTING COMPANY**

ATTEST: (SEAL)   
(Affix Corporate Seal)  
*Secretary*

  
Vice President

KTLS/SALE524.FNL

**ATTACHMENT B**

**PROPOSED RULEMAKING**  
**Assign Channel 227C1 To Newcastle, Oklahoma**  
**Substitute Channel 230A for Channel 228A at Watonga, Oklahoma**  
August 1995

**PROPOSAL**

It is proposed to add Channel 227C1 as first local service to Newcastle, Oklahoma, by deleting Channel 227C1 at Ada, Oklahoma, thus ordering KTLS to change location and city of license. This proposal requires the substitution of Channel 230A for Channel 228A at Watonga, Oklahoma and the modification of license of KIMY.

**DISCUSSION**

Channel 227C1 can be assigned to Newcastle (*Allocation Study as Exhibit #1*) as that community's first local service. We have selected a reference point 7.9 km south of Newcastle (North Latitude 35° 10' 44" and West Longitude 97° 36' 03"). This site clears the spacing requirements of §73.207 and will allow KTLS to place a 70 dBu contour over the entire city of Newcastle. The substitution of Channel 230A for Channel 228A can be made at Watonga and KIMY can be ordered to the new channel. KIMY can utilize Channel 230A on its present tower under §73.207 (*See Exhibit #3 for the Allocation Study*). Additionally, the present KIMY channel is grandfathered short-spaced under §73.213 to KWFY Channel 228A at Woodward, OK (*See Exhibit #4*). KIMY and KWFY currently operate with 3 kW ERP. It may be possible for KIMY and KWFY to concurrently agree to increase power to 6 kW, however, the short-space condition would still exist. This proposal eliminates the §73.213 short-space condition.

**ABOUT NEWCASTLE**

Newcastle, Oklahoma, is an incorporated city with a mayor and council type government. Newcastle has a comprehensive city plan and zoning. The city provides all normal city functions such as water, sewage, garbage pickup, police and fire protection. The city has grown from 1,271 persons in 1970 to an estimated 4,430 persons in 1992. The 1990 census shows the population of Newcastle to be 4,214 persons. Newcastle is not located in an

Urbanized Area. The city has commercial businesses such as motels, banks, restaurants, grocery stores, and schools. Newcastle has 16 churches. The city has one weekly newspaper and there are no broadcast stations assigned to Newcastle. The proposed allocation site is at North Latitude 35° 10' 44" and West Longitude 97° 36' 03". The center of Newcastle is located at North Latitude 35° 15' 00" and West Longitude 97° 36' 00". The proposed site is located 7.9 km on an azimuth at 180° from the center of the city<sup>1</sup>.

### **ABOUT ADA**

It is proposed to delete Channel 227C1 at Ada. This deletion will leave Ada, OK, with two FM stations (*KADA 96.7 mHz and KYKC 100.1 mHz*), one full-time AM station (*KADA-1230 kHz*), and one television station (*KTEN Channel 10*). Additionally, Channel 22 is allocated as an educational TV channel, but this channel is currently not used. Therefore, with the deletion of Channel 227C1, Ada will be left with three aural and two television allocations. The Ada Chamber of Commerce estimates the 1994 population at 16,392 persons. The 1990 U.S. Census for Ada is 15,820 persons.

### **GAIN & LOSS STUDY**

We have studied the effects of this proposal on the present and proposed coverage areas. Exhibit #4 shows the present KTLS 1.0 mV/m contour and the 1.0 mV/m contour from the proposed allocation point. The area gained by the proposal will be 13,169 square kilometers (*assuming a maximum Class C1 facility*) and the area lost will be 8,883.68 square kilometers (*assuming the present KTLS facilities*). Inside the gain area we find a new population<sup>2</sup> of 948,152 persons and inside the loss area the population is 100,393. We studied the loss area to determine if adequate service would remain in the loss area to insure no area would be left without primary aural service. Our study shows that at least five aural primary services cover the entire loss area.

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<sup>1</sup> A maximum class C1 facility will provide city grade coverage approximately 50 km from the site

<sup>2</sup> All population figures are from the 1990 US Census.

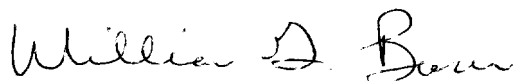


## SUMMARY

The proposed facilities will provide first local service to Newcastle, a community meeting all of the Commission's criteria to qualify as a community. The proposal to substitute channels at Watonga, OK, will eliminate a grandfathered short-space condition thus allowing KIMY to increase power to 6 kW and be properly spaced under current rules. The proposed KTLS facility at Newcastle will provide service to almost 10 times the present population without denying primary service to anyone in the loss area.

PROPOSAL		
	Present	Proposed
Newcastle, Oklahoma	—	227C1
Ada, Oklahoma	227C1, 244A, 266A	244A, 266A
Watonga, Oklahoma	228A	230A

Bromo Communications, Inc.



William G. Brown

# BROMO COMMUNICATIONS INC

(706) 782-7222 - (202) 429-0600

Allocation Study Channel 227C1  
Newcastle, OK - Using PRM Site as Ref.

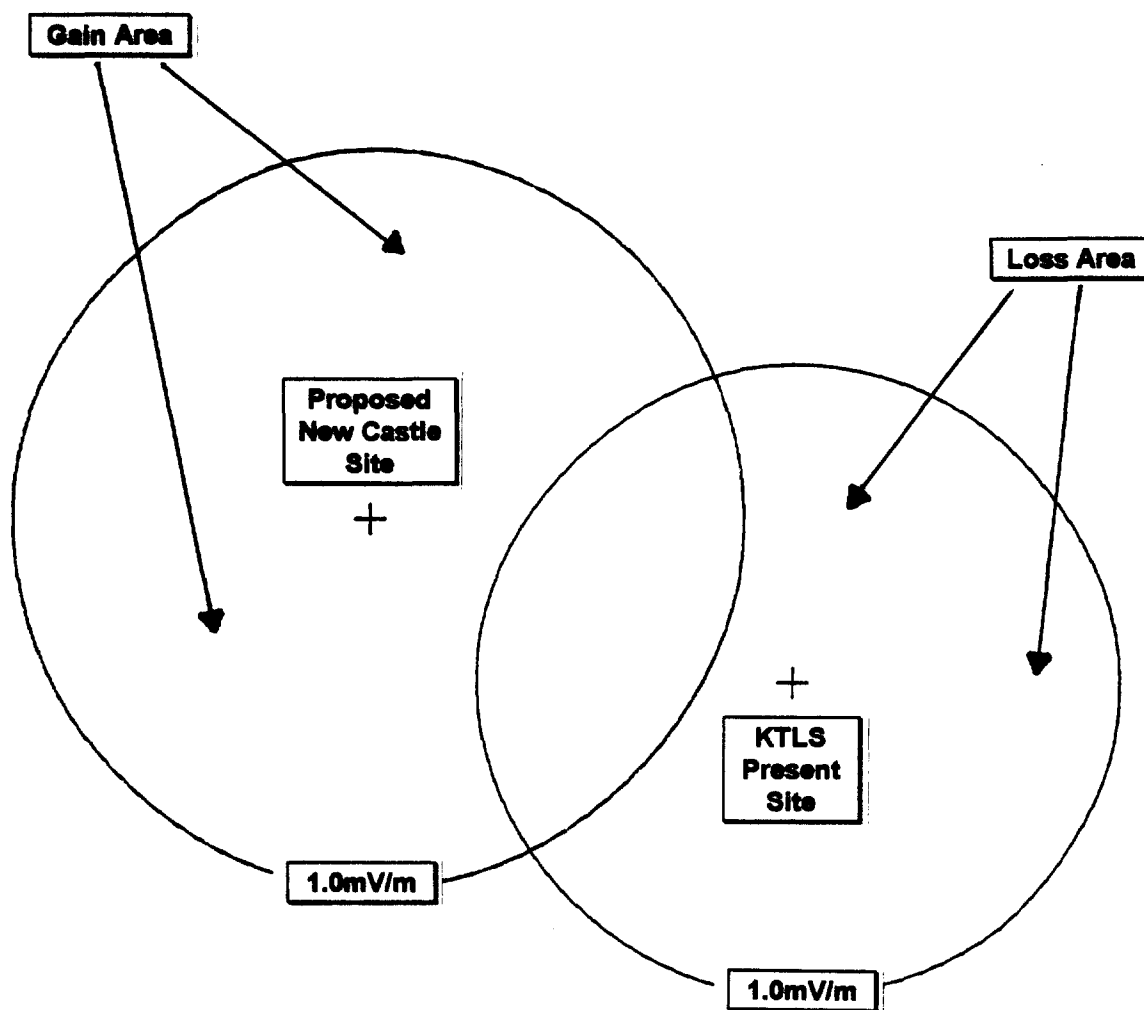
REFERENCE	CLASS C1	DISPLAY DATES
35 10 44 N		DATA 06-30-95
97 36 03 W	Current rules spacings	SEARCH 07-25-95
----- CHANNEL 227 - 93.3 MHz -----		

CALL	CH#	CITY, STATE	BEAR'	D-KM	R-KM	MARGIN
<sup>1</sup> KTLS	227C1	Ada, OK	110.0	89.74	245.0	-155.26 *
<sup>2</sup> KIMY	228A	Watonga, OK	318.5	107.48	133.0	-25.52 *
KMGL	281C	Oklahoma City, OK	14.0	42.36	41.0	1.36 <
AP227	227C2	Haltom City, TX	178.8	246.51	224.0	22.51
AP227	227C2	Haltom City, TX	171.8	247.70	224.0	23.70
AP227	227C2	Haltom City, TX	172.7	251.23	224.0	27.23
AP227	227C2	Haltom City, TX	173.3	251.71	224.0	27.71
AP227	227C2	Haltom City, TX	172.7	253.41	224.0	29.41
AP227	227C2	Haltom City, TX	172.7	253.73	224.0	29.73
AP227	227C2	Haltom City, TX	171.4	254.29	224.0	30.29
KSPIFM	229C2	Stillwater, OK	19.6	109.47	79.0	30.47
ALOPEN	227C2	Haltom City, TX	172.5	257.53	224.0	33.53
KRKZ	228C2	Altus, OK	244.7	192.38	158.0	34.38
ALOPEN	229C2	Healdton, OK	169.0	128.61	79.0	49.61

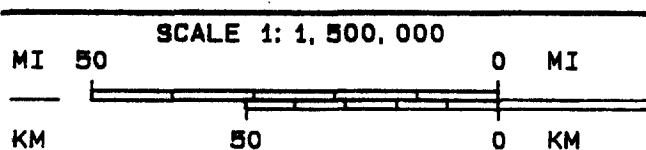
**EXHIBIT #1**  
**Proposed Rulemaking**  
**CH 227C1 to Newcastle, OK**  
KTLS Radio Station  
Ada, Oklahoma  
August 1995

<sup>1</sup> It is proposed to delete Channel 227C1 Ada, OK and add Channel 227C1 to Newcastle, OK

<sup>2</sup> It is proposed to substitute Channel 230A for Channel 228A at Watonga, OK



## Gain/Loss Study



**EXHIBIT #2**  
**Proposed Rulemaking**  
**CH 227C1 to Newcastle, OK**  
**KTLS Radio Station**  
**Ada, Oklahoma**  
**August 1995**

**BROMO** BROADCAST  
**COMMUNICATIONS** TECHNICAL CONSULTANTS

**BROMO COMMUNICATIONS INC**  
(706) 782-7222 - (202) 429-0600

Allocation Study For KIMY Channel 230  
Using Present Site as Reference Point

REFERENCE		DISPLAY DATES
35 54 17 N	CLASS A	DATA 06-30-95
98 23 09 W	Current rules spacings	SEARCH 07-26-95

----- CHANNEL 230 - 93.9 MHz -----

CALL	CH#	CITY, STATE	BEAR°	D-KM	R-KM	MARGIN
<sup>1</sup> KIMY	230A	Watonga, OK	0.0	0.00	31.0	-31.00 *
KSPIFM	229C2	Stillwater, OK	78.1	109.62	106.0	3.62
ALOPEN	229A	Cordell, OK	18.8	87.46	72.0	15.46
KZCD.C	231C2	Lawton, OK	183.2	147.94	106.0	41.94

**EXHIBIT #3**  
**Proposed Rulemaking**  
**CH 227C1 to Newcastle, OK**  
KTLS Radio Station  
Ada, Oklahoma  
August 1995

<sup>1</sup> It is proposed to substitute Channel 230A for Channel 228A at Watonga and order KIMY to the new channel. No site change is proposed.

**BROMO COMMUNICATIONS INC**  
**(706) 782-7222 - (202) 429-0600**

Allocation Study for KIMY  
Using Present Frequency Power and Site

REFERENCE		DISPLAY DATES
35 54 17 N	CLASS A	DATA 06-30-95
98 23 09 W	Current rules spacings	SEARCH 07-26-95

----- CHANNEL 228 - 93.5 MHz -----

CALL	CH#	CITY,	STATE	BEAR°	D-KM	R-KM	MARGIN
<sup>1</sup> KIMY	228A	Watonga,	OK	0.0	0.00	115.0	-115.00 *
<sup>2</sup> KWFX	228A	Woodward,	OK	302.4	108.39	115.0	-6.61 *
KSPIFM	229C2	Stillwater,	OK	78.1	109.62	106.0	3.62
ALOPEN	229A	Cordell,	OK	218.8	87.46	72.0	15.46
KRKZ	228C2	Altus,	OK	212.0	191.80	166.0	25.80

**EXHIBIT #4**  
**Proposed Rulemaking**  
**CH 227C1 to Newcastle, OK**  
KTLS Radio Station  
Ada, Oklahoma  
August 1995

<sup>1</sup> Present KIMY 3 kW facilities on Channel 228A

<sup>2</sup> Grandfathered shortspace Class A 3 kW under §73.213

**CERTIFICATE OF SERVICE**

I, Denise Lynn Felice, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 15th day of September, 1995, copies of the foregoing were mailed, postage prepaid, to the following:

Ms. Vera L. Dunn  
502 N. Santa Fe  
Anthony, Kansas 67003  
Licensee of KIMY(FM), Watonga, Oklahoma

  
Denise Lynn Felice